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POLICY BRIEF

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Armed and Abusive

MASSACHUSETTS' FAILURE TO ENTER RESTRAINING ORDERS INTO FBI DATABASE ENABLES ABUSERS TO PURCHASE GUNS JUNE 1999

- MASSACHUSETTS IS FAILING TO COMPLY WITH A FEDERAL MANDATE TO LIST RESTRAINING ORDERS ON THE FBI'S NATIONAL CRIME INFORMATION DATABASE.
- IN VIOLATION OF FEDERAL LAW, PEOPLE WITH RESTRAINING ORDERS ISSUED IN MASSACHUSETTS ARE ABLE TO PURCHASE GUNS IN OTHER STATES.

ELIZABETH HOLLAND: VICTIM OF DOMESTIC BRUTALITY

In February 1993, Elizabeth Holland took out her first restraining order against her husband, Daniel Holland, stating that he had smashed her head against the sink a number of times and threatened to kill her because she forgot to pay some bills. Five years later, in February 1998, Elizabeth Holland took out another restraining order against her husband, this time describing how he threw a glass at her head, knocked her down, and threatened to smash in her face.

That restraining order was still in effect on the evening of October 14, 1998, when Daniel Holland allegedly smashed through the downstairs window of his wife's home. As he proceeded up the stairs, he allegedly began firing the rifle he had illegally purchased just a month earlier at a WAL-MART in Concord, New Hampshire. He allegedly cornered his fleeing wife in her bedroom, shot her eight times, and then, as she lay dying, beat her savagely with the butt of the rifle. According to press accounts of the horrific crime, the Holland's eight-year-old son Patrick cowered under his covers in his bedroom throughout the attack. After hiding awake all night, Patrick ventured into his mother's room in the morning and found her dead in a pool of blood. Dazed, the little boy wandered outside wearing only his underwear, and told a next-door neighbor, "Something is wrong with my Mommy."

The Holland case illustrates the existence of a loophole that enables domestic abusers to purchase guns, a loophole that unfortunately still exists today. The restraining order against Daniel Holland prohibited him from purchasing a gun in Massachusetts. However, he was able to purchase a gun in New Hampshire because the store clerk was unaware of the Massachusetts restraining order. A national background check system that became operational just six weeks after Elizabeth Holland's murder is designed to prevent individuals with restraining orders from buying guns anywhere in the country. But Massachusetts' failure to list any restraining orders on the national system has kept the loophole open.

A Blind Spot in Background Checks of Gun Buyers

Under federal law, people are disqualified from owning or purchasing a gun if they are subject to a restraining order from an intimate such as a wife or girlfriend. In November 1998, the FBI implemented a new national system, the National Instant Check System (NICS), to screen out disqualified gun buyers such as wanted people and people with restraining orders against them. Federal gun control laws require gun merchants to block illegal gun purchases by calling into the FBI's NICS center, where a background check is conducted. NICS is able to check the background of gun buyers nationwide because states are mandated by the FBI to forward restraining order and other information that disqualifies a person from buying or possessing a gun.

However, if states do not forward information about disqualified gun buyers, the system cannot effectively detect those who are not allowed to have a gun. Massachusetts has not transmitted the names of any disqualified abusers to the FBI, despite the fact that in 1992 Massachusetts became the first state in the nation to create a statewide electronic database for restraining orders.

Massachusetts' failure to provide restraining order information to the FBI enables batterers to illegally purchase guns in other states. A person who is the subject of a restraining order from Massachusetts would be unable to buy a gun here because the restraining order would show up during the state background check. However, that same person could easily travel to one of five states that border Massachusetts and buy a gun because the NICS inquiry that the out-of-state gun merchant conducts would not reveal the restraining order from Massachusetts.

RESTRAINING ORDERS LISTED IN FBI DATABASE	
STATE	NUMBER
New York	46,527
Kentucky	31,263
Pennsylvania	19,065
Ohio	13,971
Florida	12,500
Indiana	7,242
Arizona	6,812
Minnesota	5,028
Iowa	5,016
Texas	4,245
Maryland	3,969
Oregon	3,079
New Hampshire	2,091
<i>Massachusetts</i>	0

Source: Top 13 states according to National Crime Information Center Protection Order File. June 2, 1999.

Other States Transmit Restraining Orders to the FBI

Twenty-four states have already established systems to forward restraining order information to the FBI. New York has been entering its restraining orders for more than two years and now has more than 46,000 listed in the FBI's database. New York restraining orders can be entered directly by either the courts or the police. In Iowa, the courts enter restraining order information into their criminal justice information network, and the information is then automatically transmitted to the FBI.

Deadly Potential

Statistics on domestic violence cases in Massachusetts reveal just how common it is for a domestic violence murderer to have a prior history of abuse and how, in spite of laws forbidding known abusers with restraining orders from possessing firearms, all too often they are able to get a gun and kill.

- Approximately 40,000 restraining orders are issued in Massachusetts each year.
- In the past two years, nearly 40% of all domestic violence murders in Massachusetts were committed with a gun.
- Approximately 25% of domestic violence murders in Massachusetts from 1991-1995 were committed by people with active restraining orders against them at the time of the murder, and almost half of domestic violence murderers had restraining orders against them at one time.
- In the first six months of operation, NICS disqualified 1,332 potential gun purchases on the basis of a restraining order.

These statistics underscore the importance of keeping guns out of the hands of domestic abusers. The success of NICS in preventing more than 1,300 gun purchases by people with restraining orders against them also reveals the sobering fact that many people with restraining orders attempt to purchase guns. For those states that are complying with the FBI mandate to forward restraining order information, the system works. However, the overall effectiveness of NICS is undermined by states like Massachusetts that are not participating.

Findings and Recommendations

Findings

- Massachusetts is not complying with the federal requirement to enter restraining orders into the FBI's database. This failure compromises the effectiveness of the new National Instant Check System (NICS) that gun merchants must check to determine if a person is legally allowed to purchase a gun.
- Known batterers, who are forbidden under both Massachusetts and federal law from buying a gun, are currently able to go to other states and purchase guns because restraining orders issued in Massachusetts will not show up during the NICS background check.
- Other states have developed model systems for transmitting restraining order information to the FBI. Almost one half of all states are currently complying with the FBI requirement to forward restraining order information.

Recommendations

- The Administration should work with the courts to immediately develop and implement a system for transmitting Massachusetts restraining orders to the FBI for inclusion in their database.
- The Administration should present to the Legislature within 90 days their plan for transmitting Massachusetts restraining orders to the FBI.
- The Administration should use other states such as New York and Iowa as models for systems that effectively transmit required restraining order information to the FBI.